Annual List of Rule-Making Activity
Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: **06-096**
Statutory authority: P. L. 2011 Ch. 362
Chapter number/title: **Ch. 335**, Significant Wildlife Habitat
Filing number: **2014-001**
Effective date: 1/7/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal purpose of the rule-making is to make Ch. 335 consistent with the statutory changes included in PL 2011 Ch. 362. These changes clarify the effect of vernal pool regulation on adjacent property owners, clarify the regulation of vernal pools which straddle property boundaries, and clarify the regulation of artificially created vernal pools, all as directed by Ch. 362.

Basis statement:

- The principal purpose of the rule-making is to make Ch. 335 consistent with the statutory changes included in PL 2011 Ch. 362. These changes clarify the effect of vernal pool regulation on adjacent property owners, clarify the regulation of vernal pools which straddle property boundaries, and clarify the regulation of artificially created vernal pools, all as directed by Ch. 362.
- The rules are routine technical in accordance with this law.

Fiscal impact of rule:

Because the proposed changes reduce some regulatory burdens on property owners, small businesses or the regulated community may experience some minor cost savings as a result of the proposed changes. No impact to municipalities is anticipated.

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Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	38 M.R.S. §1304(1)
Chapter number/title:	**Ch. 405**, Maine Solid Waste Management Rules: Water Quality Monitoring, Leachate Monitoring, and Waste Characterization
Filing number:	**2014-002**
Effective date:	1/7/2014
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

A previous Department audit identified the fact that Ch. 405 did not specifically state that analytical work submitted to the Department in conformance with the standards and requirements of the *Solid Waste Management Rules* must have been conducted by laboratories with appropriate certifications. The Department of Health and Human Services requires laboratory certifications in accordance with 22 M.R.S. §567 and the *Maine Comprehensive and Limited Environmental Laboratory Certification Rules* (10-144 CMR 263). The proposed rule simply states that fact.

Basis statement:

Note: This statement is adopted by the Maine Department of Environmental Protection pursuant to 5 MRS §8052(5), which requires agencies, at the time of adoption of any rule, to also adopt a written statement explaining the factual and policy basis for the rule.

> The rule was revised to clarify that analytical work submitted to the Department in conformance with the standards and requirements of the *Maine Solid Waste Management Rules* must be conducted by laboratories with appropriate certifications. The Maine Department of Health and Human Services requires laboratory certifications in accordance with 22 M.R.S. §567 and the *Maine Comprehensive and Limited Environmental Laboratory Certification Rules* (10-144 CMR 263). The proposed rule states that fact.

Fiscal impact of rule:

There is no fiscal impact anticipated.

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Agency name: Department of Environmental Protection
Umbrella-Unit: **06-096**
Statutory authority: 38 MRSA §561 *et seq.*
Chapter number/title: **Ch. 691**, Rules for Underground Oil Storage Facilities
Filing number: **2014-003**
Effective date: 1/7/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The principal purposes of the rule-making are to amend current requirements by providing additional options for conducting a site assessment at the time of the abandonment of an underground oil storage tank or facility, and to update installation, operation and maintenance requirements of underground storage facilities to be consistent with changes in industry and national standards of practice and changes in technology.

Basis statement:

Note: This statement is adopted by the Maine Department of Environmental Protection pursuant to 5 MRSA, §8052(5), which requires agencies, at the time of adoption of any rule, to also adopt a written statement explaining the factual and policy basis for the rule.

Purpose of Rule-making. The principal purposes of the rule-making are to amend current requirements by providing additional options for conducting a site assessment at the time of the abandonment of an underground oil storage tank or facility and to update installation, operation and maintenance requirements of underground storage facilities to be consistent with changes in industry and national standards of practice and changes in technology.

History. This rule was first adopted in 1991 with the specific purpose to reduce the number of oil discharges from underground oil storage tank (UST) facilities to protect ground water and drinking water supplies, to protect surface water bodies, to prevent vapor problems in homes and other buildings, and to generally protect the environment and public health and safety. It has been amended four times since 1991. The rule requires the registration of all new and existing underground petroleum tanks and piping. It establishes standards for the proper installation, operation, maintenance and closure of all types of underground oil storage facilities. The rule also includes requirements for the reporting and clean-up of leaks or other oil pollution at these facilities. The rule is authorized under 38 MRSA, sections 561 et seq.

A first draft of the rule was distributed to stakeholders prior to initiating the APA process for comment and input. The draft was discussed with Maine Energy Marketers Association's motor fuel marketing committee on September 10, 2012. In addition the site assessment and remediation sections of the rule benefited from input from Maine certified tank installers, extensive discussions with a stakeholder group of environmental consultants in the course of two meetings in September and early October of 2012, and the exchange of written recommendations. The current draft incorporates many of the changes discussed with stakeholders.

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The *Maine Administrative Procedure Act* requires State agencies to list 3 primary sources of information relied upon in the development of a rule, one of which may be professional judgment. In the case of the proposed amendments to Chapter 691, the Department relied upon the following 3 sources as well as other industry and national standards:

1. *Petroleum Equipment Institute Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Equipment at UST Facilities*; PEI RP 1200-2012;
2. *Volatile Petroleum Hydrocarbons (VPH) and Extractible Petroleum Hydrocarbon (EPH) Analysis* by Massachusetts Department of Environmental Protection, Division of Environmental Analysis Method of the Determination of VPH and EPH, Version 1.1, July, 2004; and
3. Maine Department of Environmental Protection *Compendium of Field Testing of Soil Samples for Gasoline and Fuel Oil*, April 20, 2011.

The Department also relied on the professional judgment of Department staff and their extensive years of experience with the proper installation, operation, maintenance and abandonment of safe petroleum storage systems, and the investigation and remediation of oil discharges at UST facilities.

Fiscal impact of rule:

Because of the options and flexibility provided in the amendments, there is little to no net fiscal impact on the regulated community, including small businesses, the oil distribution industry and municipalities. The regulated community will likely experience modest savings on clean-up costs that do not exceed their State fund deductible.

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Agency name: Department of Environmental Protection
Umbrella-Unit: **06-096**
Statutory authority: 38 MRS §§ 585-A, 603-A
Chapter number/title: **Ch. 106**, Low Sulfur Fuel
Filing number: **2014-013**
Effective date: 2/3/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

In 2009, the Maine Legislature enacted amendments to 38 MRS §603-A(2) that instituted the following restrictions on fuel sulfur content for distillate (#1 and #2) and residual (#4, #5, and #6) oil:

- Beginning January 1, 2016 (Note: this date was subsequently changed to July 1, 2016), a person may not use distillate oil with a sulfur content greater than 0.005 % by weight;
- Beginning January 1, 2018, a person may not use distillate oil with a sulfur content greater than 0.0015 % by weight; and
- Beginning January 1, 2018; a person may not use residual oil with a sulfur content greater than 0.5% by weight.

These amendments also require the Department to adopt major substantive rules that provide an opportunity for a licensed air contamination source that held an air emission license on September 12, 2009 (the effective date of the legislation) to apply for an equivalent alternative sulfur reduction strategy to the residual fuel oil and distillate fuel requirements. The rules must provide for the achievement of equivalent sulfur emission reductions through other means, including, but not limited to, reductions in consumption of residual fuel oil and distillate fuel, early sulfur emission reductions from a baseline emissions inventory year of 2002 and conversions to alternative fuels.

Basis statement:

This amendment incorporates statutory requirements for the use of low-sulfur distillate or residual fuels which were enacted as part of Maine's effort to address federal visibility (regional haze) planning requirements at federal Class I areas (such as Acadia National Park). In addition to improving visibility at Maine's Class I areas and reducing acid deposition, controlling sulfur emissions will provide public health benefits, since these particles have also been linked to serious health problems and environmental damage.

Fiscal impact of rule:

This adoption will not have a fiscal impact on small businesses, the regulated community or municipalities since it does not establish any regulatory requirements that are above beyond those contained in existing statute.

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Agency name: Department of Environmental Protection
Umbrella-Unit: **06-096**
Statutory authority: 38 MRSA §§ 585-A, 585-B, 341-H
Chapter number/title: **Ch. 143**, New Source Performance Standards (NSPS)
Filing number: **2014-081**
Effective date: 4/27/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The *Clean Air Act Amendments* (CAAA) offer states the option of accepting delegation for NSPS and NESHAP federal requirements for incorporation into the states regulatory programs to streamline the air emission licensing processes. Maine's *State Implementation Plan* (SIP) provides for partial or complete delegation of the EPA Administrator's authorities and responsibilities to implement and enforce the NSPS and NESHAP. This rule-making will incorporate by reference all new and amended NSPS and NESHAP that have been added between July 1, 2004 and July 1, 2013 for which the Department has chosen to take delegation. The Department of Environmental Protection may enforce upon NSPS or NESHAP regulations.

Basis statement:

The regulation is being amended to update the authority for delegation of *New Source Performance Standards* as amended through July 1, 2013. The State must obtain authority for federally promulgated amendments through the process outlined in the *Maine Administrative Procedure Act*. Consequently, Ch. 143 will need to be updated on a regular basis to incorporate changes and additions to the federal standards. It should be noted that the State did not seek delegation on rules which have a large number of unlicensed sources such as the NSPS targeting stationary internal combustion engines. Maine does not have the resources to adequately identify sources that are subject, assist these sources, and to enforce these rules which have a large universe of sources. No comments were received pertaining to this rule-making.

Fiscal impact of rule:

The affected sources are already subject to the federal requirements. Using the state licensing process facilitates the management and control of hazardous air pollutants.

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Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	38 MRSA §§ 585-A, 585-B, 341-H
Chapter number/title:	**Ch. 144**, National Emission Standards for Hazardous Air Pollutants (NESHAPS)
Filing number:	**2014-082**
Effective date:	4/27/2014
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The *Clean Air Act Amendments* (CAAA) offer states the option of accepting delegation for NSPS and NESHAP federal requirements for incorporation into the states regulatory programs to streamline the air emission licensing processes. Maine's *State Implementation Plan* (SIP) provides for partial or complete delegation of the EPA Administrator's authorities and responsibilities to implement and enforce the NSPS and NESHAP. This rule-making will incorporate by reference all new and amended NSPS and NESHAP that have been added between July 1, 2004 and July 1, 2013 for which the Department has chosen to take delegation. The Department of Environmental Protection may enforce upon NSPS or NESHAP regulations.

Basis statement:

Ch. 144 is being amended to update the authority for delegation of the *National Emission Standards for Hazardous Air Pollutants* as amended through July 1, 2013. Since the State must obtain authority for amendments through the process outlined in the *Maine Administrative Procedure Act*, this rule will need to be updated on a regular basis to incorporate changes to the federal standards. It should be noted that the State would not be seeking federal rule delegation for source categories which have a large number of unlicensed sources such as the NESHAP for *Industrial, Commercial and Institutional Boilers Area Sources* (Subpart JJJJJJ) and NESHAP for *Stationary Reciprocating Internal Combustion Engines* (Subpart ZZZZ). Maine does not have the resources to adequately identify sources that are subject, assist and educate subject sources, and enforce these rules which have a large universe of sources. No comments were received pertaining to this rule-making

Fiscal impact of rule:

The affected sources are already subject to the federal requirements. Using the state licensing process facilitates the management and control of hazardous air pollutants.

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Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	38 MRSA §§ 585-A, 341-H
Chapter number/title:	**Ch. 149**, General Permit Regulation for Nonmetallic Mineral Processing Plants
Filing number:	**2014-083**
Effective date:	4/27/2014
Type of rule:	Routine Technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department is proposing amendments to Ch. 149 and 164, which allow most Nonmetallic Mineral Processing Plants (NMMPP) and Concrete Batch Plants (CBP) to obtain operating permits from the Department without going through the licensing process required by Ch. 115, *Major and Minor Source Air Emission Licensing Regulation*. The proposed changes to Ch. 149 bring facilities who address licensing through a general permit into alignment with those covered under a traditional air emission license. The proposed changes to Ch. 164 provide for separation of responsibilities between equipment owners and operators which allows owners the flexibility to rent or loan equipment to other operators similar to Ch. 149.

Basis statement:

The regulation is being amended to bring facilities who address licensing through a general permit into alignment with those covered under a traditional air emission license issued through 06-096 CMR ch. 115. In addition to this basis statement, the Department has filed with the Secretary of State responses to comments received during the public comment period.

Fiscal impact of rule:

None – The requirements contained within these rules are already in place as part of the agency's Ch. 115 licensing processes and are based on existing state and federal requirements for such facilities. The removal of the requirement in Ch. 164 to publish a public notice may be a financial benefit to the regulated facility.

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Agency name: Department of Environmental Protection
Umbrella-Unit: **06-096**
Statutory authority: 38 MRSA §§ 585-A, 341-H
Chapter number/title: **Ch. 164**, General Permit for Concrete Batch Plants
Filing number: **2014-084**
Effective date: 4/27/2014
Type of rule: Routine Technical
Emergency rule: No

Principal reason or purpose for rule:

The Department is proposing amendments to Ch. 149 and 164, which allow most Nonmetallic Mineral Processing Plants (NMMPP) and Concrete Batch Plants (CBP) to obtain operating permits from the Department without going through the licensing process required by Ch. 115, *Major and Minor Source Air Emission Licensing Regulation*. The proposed changes to Ch. 149 bring facilities who address licensing through a general permit into alignment with those covered under a traditional air emission license. The proposed changes to Ch. 164 provide for separation of responsibilities between equipment owners and operators which allows owners the flexibility to rent or loan equipment to other operators similar to Ch. 149.

Basis statement:

The regulation is being amended to provide for separation of responsibilities between equipment owners and operators which allows owners the flexibility rent or loan equipment to other operators similar to 06-096 CMR 149. In addition to this basis statement, the Department has filed with the Secretary of State responses to comments received during the public comment period.

Fiscal impact of rule:

None – The requirements contained within these rules are already in place as part of the agency's Ch. 115 licensing processes and are based on existing state and federal requirements for such facilities. The removal of the requirement in Ch. 164 to publish a public notice may be a financial benefit to the regulated facility.

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Agency name: Department of Environmental Protection
Umbrella-Unit: **06-096**
Statutory authority: 38 MRSA §§ 585-A, 603-A
Chapter number/title: **Ch. 106**, Low Sulfur Fuel
Filing number: **2014-105**
Effective date: 6/27/2014
Type of rule: Major substantive
Emergency rule: No

Principal reason or purpose for rule:

In 2009, the Maine Legislature enacted amendments to 38 MRS §603-A(2) that instituted the following restrictions on fuel sulfur content for distillate (#1 and #2) and residual (#4, #5, and #6) oil:

- Beginning January 1, 2016 (later changed to July 1), a person may not use distillate oil with a sulfur content greater than 0.005 % by weight;
- Beginning January 1, 2018, a person may not use distillate oil with a sulfur content greater than 0.0015 % by weight; and
- Beginning January 1, 2018; a person may not use residual oil with a sulfur content greater than 0.5% by weight.

These amendments also require the Department to adopt major substantive rules that provide an opportunity for a licensed air contamination source that held an air emission license on September 12, 2009 (the effective date of the legislation) to apply for an equivalent alternative sulfur reduction strategy to the residual fuel oil and distillate fuel requirements. The rules must provide for the achievement of equivalent sulfur emission reductions through other means, including, but not limited to, reductions in consumption of residual fuel oil and distillate fuel, early sulfur emission reductions from a baseline emissions inventory year of 2002 and conversions to alternative fuels.

Basis statement:

On December 5, 2013, the Board held a public hearing on the Department's proposal to establish a process (including application submission and compliance deadlines) for sources seeking to utilize an alternative emission reduction strategy that provide for the achievement of equivalent sulfur emission reductions through other means, including, but not limited to, reductions in the consumption of residual fuel oil and distillate fuel, early sulfur emission reductions from a baseline emissions inventory year of 2002 and conversions to alternative fuels. There were no comments on this proposal, and the Board provisionally adopted the Department's proposed amendments on January 23, 2014. Final adoption of this major substantive rule-making, as provisionally adopted by the Board, was authorized by the enactment of Resolve 2014, Ch. 95, which was signed into law by Governor LePage on March 22, 2014.

Fiscal impact of rule:

This proposal will not have a fiscal impact on small businesses, the regulated community or municipalities since it does not establish any regulatory requirements that are above beyond those contained in existing statute.

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Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	38 MRSA §§ 585-A, 585-B
Chapter number/title:	**Ch. 159**, Control of Volatile Compounds from Adhesives and Sealants
Filing number:	**2014-106**
Effective date:	6/2/2014
Type of rule:	Routine technical
Emergency rule:	No

Principal reason or purpose for rule:

The Department amends this rule to simplify compliance and program oversight efforts.

Basis statement:

These amendments delay the compliance requirements for single-ply roof membrane installation or repair adhesives, single-ply roof membrane sealants and single-ply roof membrane adhesive primers until January 1, 2016; thereby addressing cross-border sales issues with neighboring jurisdictions and reducing costs to the regulated community. There were no comments on the proposed amendments.

Fiscal impact of rule:

This adoption will have a positive a fiscal impact on small businesses and other members of the regulated community, since it will allow the sale and use of less expensive product formulations.

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Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	5 MRSA §§ 8055(3); 38 MRSA §§ 341-H, 1694
Chapter number/title:	**Ch. 884** *(New)*, Designation of Cadmium as a Priority Chemical and Regulation of Cadmium in Children's Products
Filing number:	**2014-107**
Effective date:	6/2/2014
Type of rule:	Routine technical
Emergency rule:	No

Principal reason or purpose for rule:

The three rules implement Maine's *Toxic Chemicals in Children's Products* law (38 MRSA §§ 1691-1699-B), which, as set forth in 38 MRSA §1692, has the purpose of protecting the health, safety and welfare of children and other vulnerable populations by reducing their exposure to chemicals of high concern by substituting safer alternatives when feasible. Due to a lack of information in the public domain regarding the use of chemicals listed as Maine's chemicals of high concern, Maine law confers upon the Department the authority to designate chemicals as priority. When a chemical is designated as a priority chemical the Department has the regulatory authority to require the disclosure of information about that chemical's use in certain children's product categories when intentionally added above the *de minimis* level. Utilizing this statutory framework, the Department is most effective in achieving the law's stated goal through analysis of this reported information, which may provide details regarding the extent to which children's products provide the opportunity for exposure to chemicals of high concern. Information collected by the Department can then be further analyzed to determine whether additional management is necessary.

Basis statement:

The objective of Maine Law *Toxic Chemicals in Children's Products,* Title 38 MRSA §§ 1691 - 1699-B, is to reduce exposure of children and other vulnerable populations to chemicals of high concern by substitution of safer alternatives when feasible, as set forth in the Legislature's Declaration of Policy under 38 MRSA §1692. To accomplish this, the law provides the Department of Environmental Protection ("Department") the regulatory authority to collect information on chemical use and, if applicable, prohibit the sale of children's products containing priority chemicals when safer alternatives are available.

The law requires that a substance meet certain criteria to be designated a priority chemical, and that the Department provide its findings in support of such a designation. This document sets forth such findings of fact supporting the designation of cadmium as a priority chemical, and is intended to serve as the Basis Statement for the designating rule, Ch. 884, *Designation of Cadmium as a Priority Chemical and Regulation of Cadmium in Children's Products*. Department rule Ch. 880, *Regulation of Chemical Use in Children's Products,* establishes routine technical rule-making as the process by which the Department may designate priority chemicals.

Although cadmium is found widely in the environment, in foods, and in tobacco, the exposure of children to cadmium through the products they use has been of recent concern at both the state and federal levels. Reports of high levels of cadmium use in children's jewelry in 2010 led to a U.S. Consumer Product Safety Commission ("CPSC") investigation (Lui 2010), which resulted in specific recall notices for jewelry sold by Clair's and Wal-Mart stores (CPSC 2010). However, a substantial gap in information available in the public domain, regarding cadmium's specific use in children's products, limits the Department's ability to determine potential exposure risk to Maine's children.

Therefore, the Department proposed a reporting rule for certain categories of products in order to determine where cadmium may be present in children's products currently available for sale in the State of Maine. Through this rule-making, the Department designates cadmium (registered Chemical Abstract Service number 7440-43-9 as noted on Maine's Chemical of High Concern list) as a priority chemical in accordance with 38 MRSA §1694 and establishes a reporting requirement for manufacturers offering certain children's products for sale in the State of Maine.

Fiscal impact of rule:

Because this rule applies to manufacturers or distributors of certain children's products, the fiscal impacts will fall mainly on manufacturers of certain children's products which contain intentionally added amounts of the three priority chemicals. Filing the required report information with the Department is expected to cost a complying entity nominal time and effort. Regulated entities are also expected to pay a one-time reporting fee to the Department to cover the costs associated with information management, at this time that amount is yet to be determined. The impact of this reporting fee will be dependent on the regulated entity's ability to absorb such a cost, which had not been planned for in annual preparation for the budgetary impacts of government compliance.

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Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	5 MRSA §§ 8055(3); 38 MRSA §§ 341-H, 1694
Chapter number/title:	**Ch. 886** *(New)*, Designation of Mercury as a Priority Chemical and Regulation of Mercury in Children's Products
Filing number:	**2014-108**
Effective date:	6/2/2014
Type of rule:	Routine technical
Emergency rule:	No

Principal reason or purpose for rule:

The three rules implement Maine's *Toxic Chemicals in Children's Products* law (38 MRSA §§ 1691-1699-B), which, as set forth in 38 MRSA §1692, has the purpose of protecting the health, safety and welfare of children and other vulnerable populations by reducing their exposure to chemicals of high concern by substituting safer alternatives when feasible. Due to a lack of information in the public domain regarding the use of chemicals listed as Maine's chemicals of high concern, Maine law confers upon the Department the authority to designate chemicals as priority. When a chemical is designated as a priority chemical the Department has the regulatory authority to require the disclosure of information about that chemical's use in certain children's product categories when intentionally added above the *de minimis* level. Utilizing this statutory framework, the Department is most effective in achieving the law's stated goal through analysis of this reported information, which may provide details regarding the extent to which children's products provide the opportunity for exposure to chemicals of high concern. Information collected by the Department can then be further analyzed to determine whether additional management is necessary.

Basis statement:

The objective of Maine Law *Toxic Chemicals in Children's Products,* Title 38 MRSA §§ 1691 - 1699-B*,* is to reduce exposure of children and other vulnerable populations to chemicals of high concern by substitution of safer alternatives when feasible, as set forth in the Legislature's Declaration of Policy under 38 MRSA §1692. To accomplish this, the law provides the Department of Environmental Protection ("Department") the regulatory authority to collect information on chemical use and, if applicable, prohibit the sale of children's products containing priority chemicals when safer alternatives are available.

The law requires that a substance meet certain criteria to be designated a priority chemical, and that the Department provide its findings in support of such a designation. This document sets forth such findings of fact supporting the designation of mercury as a priority chemical, and is intended to serve as the Basis Statement for the designating rule, Ch. 886, *Designation of Mercury as a Priority Chemical and Regulation of Mercury in Children's Products*. Department rule Ch. 880, *Regulation of Chemical Use in Children's Products,* establishes routine technical rule-making as the process by which the Department may designate priority chemicals.

Although mercury is found widely in the environment and most prevalently in certain types of foods, the exposure of children to mercury through the products they use has been of concern at both the state and federal levels.

Therefore, the Department proposed a reporting rule for certain categories of consumer products in order to determine where mercury may be present in children's products currently available for sale in the State of Maine. Through this rule-making, the Department designates mercury and mercury compounds (registered Chemical Abstract Service number 7739-97-6, as noted on Maine's Chemical of High Concern list) as a priority chemical in accordance with

38 MRSA §1694 and establishes a reporting requirement for manufacturers offering certain children's products for sale in the State of Maine.

Fiscal impact of rule:

Because this rule applies to manufacturers or distributors of certain children's products, the fiscal impacts will fall mainly on manufacturers of certain children's products which contain intentionally added amounts of the three priority chemicals. Filing the required report information with the Department is expected to cost a complying entity nominal time and effort. Regulated entities are also expected to pay a one-time reporting fee to the Department to cover the costs associated with information management, at this time that amount is yet to be determined. The impact of this reporting fee will be dependent on the regulated entity's ability to absorb such a cost, which had not been planned for in annual preparation for the budgetary impacts of government compliance.

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Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	5 MRSA §§ 8055(3); 38 MRSA §§ 341-H, 1694
Chapter number/title:	**Ch. 887** *(New)*, Designation of Arsenic as a Priority Chemical and Regulation of Arsenic in Children's Products
Filing number:	**2014-109**
Effective date:	6/2/2014
Type of rule:	Routine technical
Emergency rule:	No

Principal reason or purpose for rule:

The three rules implement Maine's *Toxic Chemicals in Children's Products* law (38 MRSA §§ 1691-1699-B), which, as set forth in 38 MRSA §1692, has the purpose of protecting the health, safety and welfare of children and other vulnerable populations by reducing their exposure to chemicals of high concern by substituting safer alternatives when feasible. Due to a lack of information in the public domain regarding the use of chemicals listed as Maine's chemicals of high concern, Maine law confers upon the Department the authority to designate chemicals as priority. When a chemical is designated as a priority chemical the Department has the regulatory authority to require the disclosure of information about that chemical's use in certain children's product categories when intentionally added above the *de minimis* level. Utilizing this statutory framework, the Department is most effective in achieving the law's stated goal through analysis of this reported information, which may provide details regarding the extent to which children's products provide the opportunity for exposure to chemicals of high concern. Information collected by the Department can then be further analyzed to determine whether additional management is necessary.

Basis statement:

The objective of Maine Law *Toxic Chemicals in Children's Products,* Title 38 MRSA §§1691 - 1699-B, is to reduce exposure of children and other vulnerable populations to chemicals of high concern by substitution of safer alternatives when feasible, as set forth in the Legislature's Declaration of Policy under 38 MRSA §1692. To accomplish this, the law provides the Department of Environmental Protection ("Department") the regulatory authority to collect information on chemical use and, if applicable, prohibit the sale of children's products containing priority chemicals when safer alternatives are available.

The law requires that a substance meet certain criteria to be designated a priority chemical, and that the Department provide its findings in support of such a designation. This document sets forth such findings of fact supporting the designation of arsenic as a priority chemical, and is intended to serve as the Basis Statement for the designating rule, Ch. 887, *Designation of Arsenic as a Priority Chemical and Regulation of Arsenic in Children's Products*. Department rule Ch. 880, *Regulation of Chemical Use in Children's Products,* establishes routine technical rule-making as the process by which the Department will designate priority chemicals.

Although arsenic is found widely in the environment, in foods, and in tobacco, the exposure of children to arsenic through the products they use has been of recent interest at both the state and federal levels.

However, a significant lack of information in the public domain regarding arsenic's specific use in children's products, leaves considerable data gaps limiting the Department's ability to determine potential exposure risk to Maine's children. Therefore, a reporting requirement for certain categories of products is needed in order to determine where arsenic may be present in children's products currently available for sale in the State of Maine.

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Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Through this rule-making, the Department designates arsenic and arsenic compounds (registered Chemical Abstract Service name 7440-38-2 as specified on Maine's Chemicals of High Concern list) as a priority chemical in accordance with 38 MRSA §1694 and establishes a reporting requirement for manufacturers offering certain children's products for sale in the State of Maine.

Fiscal impact of rule:

Because this rule applies to manufacturers or distributors of certain children's products, the fiscal impacts will fall mainly on manufacturers of certain children's products which contain intentionally added amounts of the three priority chemicals. Filing the required report information with the Department is expected to cost a complying entity nominal time and effort. Regulated entities are also expected to pay a one-time reporting fee to the Department to cover the costs associated with information management, at this time that amount is yet to be determined. The impact of this reporting fee will be dependent on the regulated entity's ability to absorb such a cost, which had not been planned for in annual preparation for the budgetary impacts of government compliance.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	38 M.R.S. §1304(1), Resolves 2013 Ch. 43
Chapter number/title:	**Ch. 409**, Solid Waste Management Rules: Processing Facilities
Filing number:	**2014-150**
Effective date:	7/27/2014
Type of rule:	Routine technical
Emergency rule:	No

Principal reason or purpose for rule:

As required by Resolves 2013 Ch. 43 ("Resolve, Directing the Department of Environmental Protection to Develop Quantitative Odor Management Standards") the Department of Environmental Protection is posting draft changes to the *Solid Waste Management Rules: Processing Facilities,* 06-096 CMR 409 and *Composting Facilities*, 06-096 CMR 410. The revisions incorporate quantitative odor management standards for facilities that process wastewater treatment sludge from publicly owned treatment works and facilities that process septage.

Basis statement:

Purpose of rules. The revisions to the *Maine Solid Waste Management Rules: Processing Facilities*, 06-096 CMR 409 and the *Maine Solid Waste Management Rules: Composting Facilities*, 06-096 CMR 410 are to address requirements in Resolves 2013, Ch. 43 ("Resolve, Directing the Department of Environmental Protection to Develop Quantitative Odor Management Standards"). These rules set forth odor standards for facilities that process wastewater treatment sludge from publicly owned treatment works and facilities that process septage. 06-096 CMR 409 became effective May 24, 1989. It was amended September 23, 1990 and May 4, 1996. It was repealed and replaced November 2, 1998 and further amended September 6, 1999; June 16, 2006; February 18, 2009; and July 20, 2010. 06-096 CMR 410 became effective February 18, 2009 and was amended December 20, 2011.

Rule development. These rules are being developed in response to Resolves 2013, Ch. 43 ("Resolve, Directing the Department of Environmental Protection to Develop Quantitative Odor Management Standards"). Beginning in 2008, the Department began investigating appropriate methods to quantify odors from solid waste management facilities. Based on that investigative work, it was determined that the most appropriate way to determine nuisance odor was to take into account the following: frequency of the odor, intensity of the odor, duration of the odor, and offensiveness of the odor. It was also determined that odor intensity was best measured through the use of the modified n-butanol scale for odor intensity. These rules incorporate this approach.

The effect of these rules will be to establish, through a quantitative odor standard, when odor is considered a "nuisance". The proposed rules describe the content of an "odor management plan," when such a plan is required, and what steps must be taken by a facility if it is determined that a nuisance odor event has occurred.

Fiscal impact of rule:

There is not expected to be a fiscal impact as a result of this rule-making. Currently, there are general provisions in rule that require facility owners/operators to control and manage odors. The rule establishes quantifiable standards for measuring odor which provides more predictability and may assist facilities in determining appropriate approaches to odor management.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name:	Department of Environmental Protection
Umbrella-Unit:	**06-096**
Statutory authority:	38 M.R.S. §1304(1), Resolves 2013 Ch. 43
Chapter number/title:	**Ch. 410**, Solid Waste Management Rules: Composting Facilities
Filing number:	**2014-151**
Effective date:	7/27/2014
Type of rule:	Routine technical
Emergency rule:	No

Principal reason or purpose for rule:

As required by Resolves 2013 Ch. 43 ("Resolve, Directing the Department of Environmental Protection to Develop Quantitative Odor Management Standards") the Department of Environmental Protection is posting draft changes to the *Solid Waste Management Rules: Processing Facilities,* 06-096 CMR 409 and *Composting Facilities*, 06-096 CMR 410. The revisions incorporate quantitative odor management standards for facilities that process wastewater treatment sludge from publicly owned treatment works and facilities that process septage

Basis statement:

Purpose of rules. The revisions to the *Maine Solid Waste Management Rules: Processing Facilities*, 06-096 CMR 409 and the *Maine Solid Waste Management Rules: Composting Facilities*, 06-096 CMR 410 are to address requirements in Resolves 2013, Ch. 43 ("Resolve, Directing the Department of Environmental Protection to Develop Quantitative Odor Management Standards"). These rules set forth odor standards for facilities that process wastewater treatment sludge from publicly owned treatment works and facilities that process septage. 06-096 CMR 409 became effective May 24, 1989. It was amended September 23, 1990 and May 4, 1996. It was repealed and replaced November 2, 1998 and further amended September 6, 1999; June 16, 2006; February 18, 2009; and July 20, 2010. 06-096 CMR 410 became effective February 18, 2009 and was amended December 20, 2011.

Rule development. These rules are being developed in response to Resolves 2013, Ch. 43 ("Resolve, Directing the Department of Environmental Protection to Develop Quantitative Odor Management Standards"). Beginning in 2008, the Department began investigating appropriate methods to quantify odors from solid waste management facilities. Based on that investigative work, it was determined that the most appropriate way to determine nuisance odor was to take into account the following: frequency of the odor, intensity of the odor, duration of the odor, and offensiveness of the odor. It was also determined that odor intensity was best measured through the use of the modified n-butanol scale for odor intensity. These rules incorporate this approach.

The effect of these rules will be to establish, through a quantitative odor standard, when odor is considered a "nuisance". The proposed rules describe the content of an "odor management plan," when such a plan is required, and what steps must be taken by a facility if it is determined that a nuisance odor event has occurred.

Fiscal impact of rule:

There is not expected to be a fiscal impact as a result of this rule-making. Currently, there are general provisions in rule that require facility owners/operators to control and manage odors. The rule establishes quantifiable standards for measuring odor which provides more predictability and may assist facilities in determining appropriate approaches to odor management.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: **06-096**
Statutory authority: 38 M.R.S. §1301 *et seq.*, esp. §1319-O(1)
Chapter number/title: **Ch. 850**, Identification of Hazardous Wastes
Filing number: **2014-167**
Effective date: 8/17/2014
Type of rule: Routine technical
Emergency rule: No

Principal reason or purpose for rule:

This rule-making would eliminate the requirement that medicinal nitroglycerin containers be triple rinsed in order to be considered an empty container.

Basis statement:

This rule-making sought to modify the requirements for emptying nitroglycerin containers such that they could more easily be considered an empty container. Specifically the rule would eliminate the requirement that medicinal nitroglycerin containers be triple rinsed in order to be considered an empty container. Ch. 850(3)(C)(4) was modified to accomplish this goal. The rule change was posted to public comment through publication by the Secretary of State's Office on May 7, 2014, through direct mailings to the Department's subscription rule-making list on May 7, 2014, and to interested individuals and organizations on May 12, 2014 and May 15, 2014.

Fiscal impact of rule:

Positive fiscal impacts will be realized by members of the regulated community such as for medical facilities that handle medicinal nitroglycerin.

Annual List of Rule-Making Activity
Rules Adopted January 1, 2014 to December 31, 2014
Prepared by the Secretary of State, pursuant to 5 MRSA, §8053-A, sub-§5

Agency name: Department of Environmental Protection
Umbrella-Unit: **06-096**
Statutory authority: PL 2013 ch. 277; Resolves 2011 ch. 46
Chapter number/title: **Ch. 355**, Coastal Sand Dune Rules
Filing number: **2014-261**
Effective date: 10/26/2014
Type of rule: Routine technical
Emergency rule: No

Principal reason or purpose for rule:

The rule repeals and replaces existing provisions allowing reconstruction of an existing structure in a frontal dune if the dune is protected by a seawall and other conditions are met, to conform to the direction of PL 2013 ch. 277. The standard conditions in the rules will also be amended to correct an inconsistency with Resolves 2011 ch. 46.

Basis statement:

The purpose of this rulemaking is to repeal and replace existing provisions allowing reconstruction of an existing structure in a frontal dune if the dune is protected by a seawall and other conditions are met, to conform to the direction of PL 2013 ch. 277. The standard conditions in the rules are also amended to correct an inconsistency with Resolves 2011 ch. 46.

Fiscal impact of rule:

The amendments have no apparent fiscal implications. The extension of the effective term of a permit may save some permit holders the cost of extending or renewing permits.